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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160706586-6780-01]

RIN 0648-XE726

Atlantic Highly Migratory Species; Adjustments to 2016 Northern Albacore Tuna and Atlantic Bluefin Tuna Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule; adjustments to 2016 northern albacore quota and 2016 Atlantic bluefin tuna Reserve category quota.

SUMMARY: NMFS adjusts the northern albacore (NALB) annual baseline quota for 2016 with available underharvest of the 2015 adjusted U.S. NALB quota. NMFS also augments the 2016 Atlantic bluefin tuna (BFT) Reserve category quota with available underharvest of the 2015 adjusted U.S. BFT quota. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*] through December 31, 2016.

ADDRESSES: Supporting documents such as the Environmental Assessments and Fishery Management Plans and their Amendments described below may be downloaded from the HMS website at www.nmfs.noaa.gov/sfa/hms/. These documents also are available upon request from Sarah McLaughlin or Brad McHale at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of NALB and BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(e) describes the NALB annual quota recommended by ICCAT and the annual NALB quota adjustment process. Section 635.27(a) subdivides the ICCAT-recommended U.S. BFT quota among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and describes the annual BFT quota adjustment process. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quotas.

The NALB quota implementation and quota adjustment processes, along with the BFT quota adjustment process, were previously analyzed in Amendment 7, which

included a Final Environmental Impact Statement, Final Regulatory Impact Review, Final Regulatory Flexibility Analysis, and Final Social Impact Statement, published in August 2014. ICCAT conducted another BFT stock assessment update in 2014, and, after considering the scientific advice in the stock assessment, adopted a recommendation regarding western Atlantic bluefin tuna management that increases the U.S. bluefin tuna quota for 2015 and 2016 (ICCAT Recommendation 14-05: “Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT Concerning the Western Atlantic BFT Rebuilding Program”). NMFS published a final rule to implement that baseline annual U.S. BFT quota on August 28, 2015 (“BFT Quota Rule,” 80 FR 52198), and prepared an Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis for that action.

NALB Annual Quota and Adjustment Process

As described in the final rule implementing Amendment 7, since 1998, ICCAT has adopted recommendations regarding the NALB fishery. A multiyear management measure for northern albacore tuna was first adopted in 2003, setting the Total Allowable Catch (TAC) at 34,500 mt. ICCAT’s Standing Committee on Research and Statistics (SCRS) assessed the northern albacore tuna stock in 2009 and concluded that the stock continues to be overfished with overfishing occurring, recommending a level of catch of no more than 28,000 mt to meet ICCAT management objectives by 2020. In response, in 2009, ICCAT established the NALB rebuilding program via Recommendation 09-05, effective for 2010 and 2011, setting a 28,000-mt TAC and including several provisions to limit catches by individual ICCAT Contracting Parties (for major and minor harvesters) and reduce the amount of unharvested quota that could be carried forward from one year

to the next, from 50 percent to 25 percent of a Contracting Party's initial catch quota. Subsequent ICCAT NALB Recommendations 11-04 and 13-05 (both entitled "Supplemental Recommendation by ICCAT Concerning the North Atlantic Albacore Rebuilding Program") maintained the TAC at 28,000 mt for 2012 through 2016 and contained specific recommendations regarding the NALB rebuilding program, including allocation of the annual TAC among the European Union, Chinese Taipei, the United States, and Venezuela. The U.S. quota for 2012 through 2016 has been 527 mt, annually. These recommendations limit Japanese northern albacore tuna catches to 4 percent in weight of its total Atlantic bigeye tuna longline catch, and limits the catches of other ICCAT parties to 200 mt. Recommendation 13-05 also specifies that quota adjustments for a given year's underharvest or overharvest must be made within 2 years from the subject year (i.e., adjustments based on 2015 catches would be made during or before 2017). The maximum underharvest can be carried forward from one year to the next remains at 25 percent of a Contracting Party's initial catch quota.

The annual U.S. NALB quota of 527 mt is codified at § 635.27(e) and will remain in effect until changed (for instance, if a new ICCAT NALB TAC recommendation is adopted). Because ICCAT adopted TACs for 2014, 2015, and 2016 in Recommendation 13-05, NMFS currently anticipates that these annual base quotas would be in effect through 2016, but they will remain in place unless and until a new NALB TAC and catch limits are adopted by ICCAT.

Amendment 7 established the process by which NMFS adjusts the U.S. annual NALB quota for any previous year's underharvest. NMFS makes such adjustments

consistent with ICCAT limits and when complete catch information for the prior year is available and finalized.

Adjustment of the 2016 NALB Quota

Based on NMFS' best available information as of July 21, 2016, the total 2015 NALB catch is 247.70 mt, which is 293.61 mt less than the 2015 adjusted quota (i.e., 527 mt plus 14.31 mt of 2014 underharvest carried forward to 2015, totaling 541.31 mt). Thus, the underharvest for 2015 is 293.61 mt. Per the 2013 ICCAT recommendation, only 25 percent of the total 2015 U.S. quota, or 131.75 mt, of that underharvest may be carried forward to the 2016 fishing year. Consistent with the process established in Amendment 7, the adjusted 2016 NALB quota is 527 mt plus 131.75 mt, totaling 658.75 mt.

BFT Annual Quota and Adjustment Process

Pursuant to Amendment 7, NMFS augments the Reserve category quota to the extent that underharvest from the prior year's adjusted U.S. BFT quota is available. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. Consistent with the BFT quota regulations, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota pursuant to regulatory determination criteria described at § 635.27(a)(8), or for scientific research.

NMFS implemented ICCAT Recommendation 14-05 in the BFT quota final rule in August 2015 (80 FR 52198, August 28, 2015). That rulemaking implemented Recommendation 14-05, which included a 2,000-mt western BFT TAC of 2,000 mt (for 2015 and 2016) and the recommended annual U.S. baseline quota of 1,058.79 mt. The

total annual U.S. quota, including the 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED) is 1,083.79 mt. The maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its total quota.

The baseline annual U.S. BFT quota of 1,058.79 mt is codified at § 635.27(a) and will remain in effect until changed (for instance, if a new ICCAT western BFT TAC recommendation is adopted). Because ICCAT adopted TACs for 2015 and 2016 in Recommendation 14-05, NMFS currently anticipates that these annual baseline quotas would be in effect through 2016, but they will remain in place unless and until a new western BFT TAC and catch limits are adopted by ICCAT.

Adjustment of the 2016 BFT Reserve Category Quota

Based on NMFS' best available information as of July 21, 2016, the total 2015 BFT catch is 896.30 mt. This total catch includes 876.80 mt of landings and 19.50 mt of dead discards, which includes the best available estimate of 14.60 mt of dead discards for the pelagic longline fishery and the observed dead discards of 4.90 mt for the purse seine fishery. The total catch of 896.30 mt is 282.36 mt less than the quota available for 2015 landings and dead discards (i.e., 1,083.79 mt plus 94.87 mt of 2014 underharvest carried forward to 2015, totaling 1,178.66 mt). Thus, the underharvest for 2015 is 282.36 mt. Per the 2014 ICCAT recommendation, only 10 percent of the total 2015 U.S. quota, or 108.38 mt, of that underharvest may be carried forward to the 2016 fishing year. The codified Reserve category quota is 24.8 mt. Consistent with the process established in Amendment 7, NMFS augments the Reserve category quota with 108.38 mt in this action. Effective January 1, 2016, NMFS adjusted the Reserve category quota for 2016 to

92.2 mt by reallocating 101.4 mt of Purse Seine quota to the Reserve category (based on 2015 catch by Purse Seine category participants and provisions for calculating Purse Seine allocations in Amendment 7) and also transferring 34 mt of Reserve category quota to the Longline category (81 FR 19, January 4, 2016). Thus, as of the effective date of this action (*[insert date of publication in the FEDERAL REGISTER]*), the adjusted 2016 Reserve category quota will be 200.58 mt (i.e., 92.2 mt plus 108.38 mt).

Classification

The Assistant Administrator for NMFS (AA) has determined that this final rule is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

The AA finds that it would be unnecessary and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS solicited and accepted public comment on the NALB quota implementation and quota adjustment processes, along with the BFT quota adjustment process, as part of the Amendment 7 rulemaking. Comments on these provisions in response to the proposed Amendment 7 rulemaking were generally supportive and were addressed in the Response to Comments section of the Amendment 7 final rule. (See comments 18, 19, and 105 at 79 FR 71530-71531 and 71553). This action applies the formula noticed to the public in the earlier action (Amendment 7), using the best available data regarding 2015 catch and underharvest and calculating allowable underharvest consistent with ICCAT recommendations. The Amendment 7 rulemaking specifically provided prior notice of, and accepted public comment on, these formulaic

quota adjustment processes and the manner in which they occur. The application of this formula in this action does not have discretionary aspects requiring additional agency consideration and thus public comment for this action would not and could not result in any changes.

There is good cause under U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make the rule effective upon publication in the **Federal Register**. The fisheries for NALB and BFT began on January 1, 2016. NMFS monitors NALB and BFT annual catch against the available quota. Delaying the effective date of these quota adjustments would unnecessarily complicate the management of the NALB and BFT fisheries, which rely on management flexibility to respond quickly to fishery conditions to ensure that fishermen have a reasonable opportunity to catch the available quota. For example, under the NALB fishery closure regulations, NMFS must close the fishery when the annual fishery quota is reached. Closure of the fishery based only on the baseline (codified) quota versus the adjusted NALB quota would preclude the fishery from harvesting NALB that are legally available consistent with the ICCAT recommendations and the 2006 Consolidated HMS FMP, as amended. Adjusting the BFT Reserve category as soon as possible provides NMFS the flexibility to transfer quota from the Reserve to other fishing categories inseason after considering the regulatory determination criteria, including fishery conditions at the time of the transfer. NMFS could not appropriately adjust the annual quotas for 2016 sooner because the data needed to make the determination only became available in late July and additional time was needed for agency analysis and consideration of the data.

Additionally, to prevent confusion and potential overharvests, these adjustments should be in place as soon as possible to allow the impacted sectors to benefit from any subsequent quota adjustments to the fishing categories, give them a reasonable opportunity to catch available quota, and provide them the opportunity for planning operations accordingly.

This action is being taken under §§ 635.27(e) and 635.27(a)(10) and is exempt from review under Executive Order 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 25, 2016

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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